IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 24705 of 2007()

OS.12/2007 of SUB COURT, OTTAPPALAM
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PETITIONER:

VASU, S/O. ACHUTHAN,
THOZHUTHUPARAMBIL HOUSE,
MATHIRIMANGALAM AMSOM AND DESOM,
OTTAPPALAM TALUK.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENT:

PADMARAJAN, S/O.PADMANABHAN,
PALAKKAL HOUSE, KUNNATHARA AMSOM AND DESOM,
OTTAPALAM TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN,J

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W.P.(C).24705 of 2007

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Dated this the 14th day of August, 2007

JUDGMENT

This writ petition is filed challenging the order of the Subordinate Judge, Ottappalam, in rejecting the prayer to receive written statement. The learned Subordinate judge rejected the same on the ground that since the written statement is filed beyond the period (executable period of 90 days) it is being rejected. The learned Subordinate Judge has failed to take note of the decision of the Apex Court reported in **Kailash v. Nanhku (2005(2) KLT 623 (SC))** the Apex Court held " the purpose of providing the time schedule for filing the written statement under Order VIII Rule I of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though the language of the proviso to Rule 1 of Order VIII if the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the

Procedural Law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order VIII Rule 1 of the CPC is not completely taken away".

The learned counsel for the writ petitioner submits that on account of ailment he was not able to file the written statement in time. Considering the contentious nature of the suit it is only just and desirable to give an opportunity to file the written statement and proceed with the matter on merits. Therefore, the order under challenge is set aside and the written statement is received and the court is directed to proceed further in accordance with law.

M.N.KRISHNAN,JUDGE

dvs